THE HON'BLE SRI JUSTICE C.V. RAMULU

Monday, 31st day of December,2007

W.P.No.4612 of 1999

Between:-

R. Sudhakar & others … Petitioners

and

M/s. Indian Immunologicals (A unit of the
National Dairy Development Board)
Road No.44, Jubilee Hills, Hyderabad,
rep. by its Chief Executive
and another … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.4612 of 1999

ORDER:

The short question that falls for consideration in this Writ Petition is whether the petitioners are entitled for the benefits of revised scales of pay consequent on the V Pay Commission recommendations with effect from 1-1-1996 till the date of their retirement under the Voluntary Retirement Scheme (VRS) ?

Admittedly, petitioners, who were working with the 1st respondent, on introduction of VRS, applied for voluntary retirement in pursuance of the Circular dated 8/9-10-1997 and they were permitted to retire voluntarily during April/June,1997. The terminal benefits were computed on the basis of the last drawn pay/emoluments. The grievance of the petitioners is that though retired voluntarily during April/June,1997 and received all the terminal benefits, they are entitled for pay and allowances and also other consequential benefits with retrospective effect from 1-1-1996 as per the revised pay scales of 1996. Respondent No.1 allowed the benefit of revised pay scales based on the recommendations of the V Pay Commission with effect from 1-1-1996 to all the employees; whereas, the said benefit was not extended to them stating that they were not in service as on 27-4-1998, though the benefits were given with retrospective effect from 1-1-1996. Thus, the only objection of the respondents is that since the petitioners were not on the rolls as on the date of implementation of the revised pay scales consequent on the central pay scale pattern as per the recommendations of the V Pay

Commission, they are not entitled for the benefits.

Learned counsel for the respondents strenuously contended that when the petitioners retried voluntarily during April/June,1997, the scheme of extending the revised pay scales to them does not arise. There was no relationship of master and servant between the 1st respondent and the petitioners, once the VRS has been implemented and the petitioners retired from service and were paid all the benefits as per the Scheme. The revised pay scales, as implemented by the respondents from 1-1-1996 as per the recommendations of the V Pay Commission, have no relevance to the case of the petitioners, since they were not in service as on the date of implementation of the revised pay scales i.e. 27-4-1998. Merely because the petitioners were in service as on 1-1-1996, they are not entitled for the benefits, which have been accrued to the employees working in the organization as on the date of implementation of the revision of pay scales. Learned counsel has drawn attention of the Court to clause 7.1 of the Voluntary Retirement Scheme,1997, which reads as under:

> "7.1 : An employee availing voluntary retirement under the Scheme shall not be eligible for re-employment in any other company or concern belonging to the same management. There will not be any claim of whatsoever nature, from an employee availing voluntary retirement scheme including for reinstatement, re-employment, or any other."

and submitted that in view of the above, it must be deemed that the petitioners were excluded from the benefit of revised pay scales.

In fact, there is no such indication in the said clause. What all clause 7.1, noticed above, states is that there will not be any claim whatsoever nature from an employee availing the VRS including reinstatement, re-employment or any other, that is to say, that there is complete cessation of employment. But, that does not mean that the said clause excludes any of the claims for which the petitioners are

entitled for the period they had actually worked in the organization. Though they have retired from service during April/June,1997, since they were in active service as on 1-1-1996 till the date of their retirement, they are also entitled for the benefit under the revised pay scales on par with those employees, who were in service as on 27-4-1998. Clause 7.1 or any other clause of the VRS does not prohibit claiming of any benefits that may be conferred with retrospective effect on the employees by the organization, particularly in view of revision of pay scales as per the recommendations of the V Pay Commission. The implementation of the recommendations of the V Pay Commission from 1-1-1996 would indicate that as on 1-1-1996 the commission has already sat and recommendations were in offing and it is the legitimate expectation of the employees that any benefit that may accrue as per the recommendations of V Pay Commission would be extended to them. In view of the fact that there is no exclusion clause in the VRS applied in case of the petitioners, the decision relied upon by the learned counsel for the respondents in **HEC VOLUNTARY RETD.EMPLOYEES WELFARE SOCIETY v. HEAVY ENGINEERING CORPORATION LIMITED**[1] has no relevance to the facts of this case. In the said case, it was held as under:

> "26. Considering the matter from that context, we are of the opinion that it cannot be said that the Company intended to extend the said benefits to those who had opted for voluntary retirement. Clause 3.2 of the circular includes only those who were on the rolls of the Corporation as on 1-1-1992, as also those who ceased to be in service on that date on account of superannuation or death. The appellants do not come in the said category. In view of the fact that they have not been expressly included within the purview thereof, we are of the opinion that although they have not been excluded by clause 3.3, they would be deemed to be automatically excluded."

In fact, as per the above paragraph, Clause 3.2 of the Circular therein includes only those who were on the rolls of the Corporation as

on 1-1-1992 as also those who ceased to be in service as on that day on account of superannuation or death. Further, clause 3.3 of the Scheme therein, which excluded the applicability of the Scheme, categorically states that the same shall not be applicable to those who were on the rolls of the Corporation as on the said date, but subsequently left the service of the respondents for the reasons stated thereunder, viz.,, dismissal, discharge, resignation without permission, resignation in cases of disciplinary action etc. Under those circumstances, the apex Court has held that the appellants therein, who retired under VRS and were not included in Clause 3.3 shall be treated as excluded employees and thus the relief was denied to the appellants therein, who retired under the VRS.

In the scheme evolved by the 1st respondent-company on 27-4-1998 it is stated that it has been decided to revise the pay scales of Indian Immunologicals employees. Clause 1.1 of the said Order reads as under:

"These pay scales shall be effective from 1-1-1996"

In the entire scheme, there is no exclusion of a particular category of employees for the purpose of receiving benefits under the Scheme. Nowhere it is stated that the employees, who have already retired under the VRS or otherwise are not entitled for the benefits of revised pay scales. Therefore, the theory of exclusion cannot be applied to the case of petitioners and the petitioners are entitled for all the benefits as per the Circular dated 27-4-1998, since Clause 1.1 of the said Circular in unambiguous terms indicates that the revised pay scales shall be effective from 1-1-1996. The scheme dated 27-4-1998 or any of its provisions are not similar to that of Clauses 3.2 and 3.3 discussed in the judgment of the Apex Court.

For all the above reasons, I am of the opinion that in terms of the

Circular dated 27-4-1998, the petitioners, since they were in service as on 1-1-1996, are entitled for all the benefits of the revised pay scales as per V Pay Commission recommendations and are also entitled for all the benefits as per their last drawn pay as would be fixed as per the revised pay scales with effect from 1-1-1996 with all consequential benefits thereof.

With the above directions, the Writ Petition is disposed of. No order s to costs.

31-12-2007

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[1] 2006(3) SCC 708